

1. Felipe Gonzalez, individually and doing business as FG Auto Sales and Dismantling (FGASD) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Los Angeles Region (Regional Board), may impose liability under § 13385 and § 13399.33(c) of the California Water Code (CWC).
2. A hearing concerning this Complaint will be held before the Regional Board or Regional Board Hearing Panel (Hearing Panel) within ninety days after service of this Complaint on FGASD. FGASD will be notified at least ten days in advance of the date, time and place of the hearing. FGASD or FGASD's representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.
3. The Regional Board will consider whether to affirm, reject or modify the proposed administrative civil liability or to refer the matter to the Attorney General for recovery of judicial civil liability.
4. In the event that FGASD fails to comply with the requirements of this Complaint, the Executive Officer is authorized to refer this matter to the Office of the Attorney General for enforcement.
5. FGASD, located at 831 MacDonough Avenue, Wilmington, California, is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No.97-03-DWQ, and NPDES No. CAS000001 (General Permit). This facility was enrolled in the General Permit on March 24, 2000. The facility's WQID Number is 419I 015699 and is identified as Auto Dismantling facility (SIC 5015). The General Permit (Section B, No. 14) requires FGASD to submit an annual report by July 1<sup>st</sup> of each year.

6. Pursuant to CWC § 13399.31, a Notice of Non-Compliance (NNC) was mailed to FGASD on July 24, 2003 for failure to submit the 2002/03 stormwater annual report. A Notice of Violation (NOV) was then mailed to FGASD on August 29, 2003 for failing to submit the 2002/03 stormwater annual report within 30 days of mailing of the NNC. The NOV warned FGASD of the mandatory fines that are required to be assessed for failure to submit the stormwater annual report. FGASD failed to respond to the NNC and the NOV until February 5, 2004. By not submitting the required stormwater annual report on time, FGASD violated provisions of the General Permit, the Federal Clean Water Act and the CWC.
7. CWC § 13385(a)(2) provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. CWC § 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
8. An incomplete annual report was received on February 5, 2004. Based on this late submittal of the 2002/03 annual report, FGASD is alleged to have violated the General Permit for 219 days (July 1, 2003 to February 5, 2004) and is civilly liable for a total of 219 days of violation at a maximum of \$10,000 for each day in which the violation occurs.
9. CWC § 13399.33(c) provides that the Regional Board shall impose a minimum penalty of not less than \$1,000 on any person who fails to submit an annual report in accordance with CWC § 13399.31.
10. Pursuant to CWC § 13399.33(a)(2), the Regional Board is required to consider the following factors in determining the amount of civil liability to be imposed:
  - a. The nature, circumstances, extent, and gravity of the violation:  
FGASD has been given sufficient notice to submit the annual report. FGASD has not responded to the notice and has not submitted the annual report for 219 days; therefore, no reduction in the civil liability is warranted. Annual reports provide compliance information for permitted facilities, and are essential for Regional Board staff in determining whether an operation is in compliance with the General Permit.
  - b. Violator's ability to pay:  
The Regional Board lacks sufficient information to determine FGASD's ability to pay. The Regional Board feels that the penalty is correctly assessed; therefore, no reduction in the civil liability is warranted.
  - c. Prior history of violations:  
On March 15, 2001, Regional Board staff mailed a Notice of Violation to FGASD for failure to prepare and retain a Storm Water Pollution Prevention Plan (SWPPP) on site. The SWPPP was later submitted on April 6, 2001. On July 24, 2003, Regional Board mailed an NNC to FGASD for not submitting the 2002/03 annual report. On August 29, 2003, Regional Board mailed an NOV to FGASD for no response to the NNC. On

July 22, 2003 the Regional Board issued a Notice to Comply to FGASD for failure to implement appropriate BMPs.

- d. Degree of culpability:  
FGASD is required under the General Permit (Section B, No. 14) to submit an annual report by July 1<sup>st</sup> every year. The Regional Board sent FGASD an NNC when FGASD's 2002/03 stormwater annual report was not received.
  - e. Savings resulting from the violation:  
Regional Board staff have examined the cost savings from non-submittal of the stormwater annual report and determined that it is at least \$500.
  - f. Regional Board staff is unaware of other matters which would have impacted on the decision on the amount of civil liability to be assessed on this matter.
11. After consideration of those factors, the Executive Officer proposes civil liability be imposed on FGASD in the amount of \$2,900 (of this amount, \$1,000 represents the minimum mandatory penalty of CWC § 13399.33(c) for failing to submit a stormwater annual report).
12. CWC § 13399.33(d) provides that the Regional Board may recover from FGASD the costs incurred by the Regional Board in this matter. The Regional Board charges a rate of \$70 per hour for staff cost recovery. As of February 17, 2004, staff spent 20 hours investigating FGASD's failure to comply with the annual report requirement of the General Permit. Staff costs to date incurred by the Regional Board total \$1,400.

#### PROPOSED CIVIL LIABILITY

PENALTY CATEGORY	CALCULATION	TOTAL
Non-compliance with Order No. 97-03 DWQ by failing to submit the 2002/03 annual report.	CWC § 13399.33: Minimum penalty of \$1,000 for failing to submit a stormwater annual report.	\$ 1,000
Recovery of Staff Costs	(20 Hours)(\$70/Hour)	\$1,400
Avoided Cost	\$500	\$500
<b>Recommended ACL</b>		<b>\$2,900</b>

13. FGASD may waive its right to a hearing. Should FGASD choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return the executed waiver to the Regional Board at 320 West 4<sup>th</sup> Street, Suite 200, Los Angeles, CA 90013, to be received by the Regional Board by the close of business on March 22, 2004. If the hearing is waived, in order to satisfy the civil liability, a check in the amount of \$2,900 (payable to the State Water Resources Control Board-Storm Water Account) shall accompany the signed waiver.

14. Regulations of the U. S. Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.

If FGASD has any questions, please contact Wendy Phillips at (213) 576-6618 or Wendy Liu at (213) 620-2219.

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Date

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Dennis A. Dickerson  
Executive Officer

## WAIVER OF HEARING

By signing below and attaching a check for the amount of civil liability proposed in the Administrative Civil Liability Complaint No. R4-2004-0021, FGASD waives the right to a hearing before the Regional Board. FGASD understands that it is forgoing its right to argue against the allegations made by the Executive Officer in this Complaint, and against imposition of, and the amount of, civil liability imposed. Furthermore, FGASD understands that if an Administrative Civil Liability Order is adopted by the Regional Board, payment will be due thirty days after the date of adoption.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_  
FG Auto Sales and Dismantling

Date: \_\_\_\_\_